

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0053P

Sales & Use Tax

For the Months January, February, March, April, May, July, and August Of 2003

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of monthly sales tax returns for the months of January, February, March, April, May, July, and August of the year 2003.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was unintentional and due to unawareness.

In October 2002 the taxpayer received an information letter from the Department. The taxpayer erroneously assumed the payment due dates had changed from monthly to quarterly, and therefore paid sales tax quarterly up through August 2003.

The Department points out that there was no language in the information letter which changed the due dates.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties as the taxpayer misread the said information letter. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.